

PE2060/B: Review existing legislation and legal remedies against trespassers

Minister for Victims and Community Safety written submission, 15 March 2024

Thank you for your letter dated 14 February 2024 seeking views from the Scottish Government on the points raised in PE2060: Review existing legislation and legal remedies against trespassers.

The Scottish Government provided a submission in relation to trespass in a letter dated 28 November 2023 to the Committee which covered the points raised by the petitioner.

You have asked for the Scottish Government's views on three questions arising from the Committee's consideration of the petition on 7 February 2024. These relate to practical remedies available for individuals who face persistent, repeated trespassing.

- Whether the Trespass (Scotland) Act 1865 ("the 1865 Act") can effectively address the circumstances outlined above

Yes, the 1865 Act does effectively address the circumstances. Trespass can be described as entering or remaining on another's property without permission.

Under common law, a landowner has the right to exclusive possession of their property. Accordingly, if someone enters a property without the lawful authority of the landowner or refuses to leave the property, then this may constitute a criminal offence under the 1865 Act. On summary conviction, an individual may be found liable to a fine not exceeding £200. Where a person persists it should be reported to the police.

In the context of civil liability, if a trespasser causes damage to the property or interference with the landowner's enjoyment of their property, the landowner may seek legal recourse against the trespasser, including damages or an interdict to prevent further trespass.

- Whether the 1865 Act is an effective deterrent, given that many people incorrectly believe that the law of trespass doesn't exist in Scotland

It is well understood by the general public that people cannot reside without permission in say, someone else's private garden. The Scottish Outdoor Access Code is widely publicised by a range of organisations including NatureScot, and sets out various categories of land which are outwith access rights, including for example a privacy zone around dwellings.

- more could be done to strengthen the Act to offer protection against trespassers

We do not consider that strengthening of the 1865 Act is required. The Act was amended by the Land Reform (Scotland) Act 2003 Act ("the 2003 Act") and the Scottish Outdoor Access Code introduced under the 2003 Act provides further guidance in relation to access rights.

In addition, you ask for confirmation on whether the Scottish Government intends to carry out work related to the issues arising in the petition as well as raising awareness about public rights to access different types of land and the law of trespass in Scotland. The promotion of the Scottish Outdoor Access Code (SOAC) [Publication 2005 - Scottish Outdoor Access Code.pdf \(outdooraccess-scotland.scot\)](#) is, in our view, sufficient. The Code makes

reference to the provisions of the 1865 Act, including for example, section 2.11 of the SOAC which sets out where access rights do not apply and where the law of trespass does, including categories of land such as a privacy zone around dwellings, the curtilage of other buildings, or crop land. Other relevant sections are 3.13 to 3.17 and 6.12 to 6.16.

We receive virtually no representations on this issue, so you will appreciate that this would not merit taking any direct action unless new substantial evidence comes to light.

I hope that this sufficiently addresses the points that you raise.

SIQBHIAN BROWN